

Texas Department of Health

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

Effective Date: February 19, 1996

Amended: May 10, 1998

Amended: March 23, 2003

§295.201. GENERAL PROVISIONS.

(a) Purpose. The purpose of these sections is to establish the means to control and minimize public exposure to lead by regulating lead-based paint activities in target housing and child-occupied facilities.

(b) Scope (for the purposes of certification and accreditation).

(1) Rules application. These sections contain procedures and requirements for the accreditation of lead training providers, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities and standards for performing such activities in target housing and child-occupied facilities. These sections also require that all lead-based paint activities in target housing and child-occupied facilities be performed by certified individuals.

(2) Exclusions. These sections do not apply to housing for the elderly or persons with disabilities, unless a child who is six years of age or younger resides or is expected to reside in that housing, nor do these sections apply to target housing with zero bedrooms. These sections also do not apply to persons who perform lead-based paint activities within residences which they own, unless the residence is occupied by a person or persons other than the owner or the owner's immediate family while the activities are being conducted or a child residing in the building has been identified as having an elevated blood lead level.

(c) Severability. Should any section or subsection in this chapter be found to be void for any reason, such finding shall not affect any other sections.

§295.202. DEFINITIONS. The following words and terms, when used with these sections, shall have the following meaning.

(1) Accessible surface - An interior or exterior surface painted with lead-based paint that is accessible to a young child to mouth or chew.

(2) Accredited training program - A training program that has been accredited by the Texas Department of Health (department) to provide training for persons engaged in lead-based paint activities.

(3) Act - Senate Bill 544 as amended by House Bill 729, 75th Legislature, 1997, codified at Texas Civil Statutes, Article 9029. The Act will be codified as Chapter 1955 of the Occupations Code as of June 1, 2003.

(4) Adequate quality control - A plan or design to ensure the authenticity, integrity, and accuracy of lead-based paint samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(5) Approved documented methodologies - Methods or protocols used to sample for the presence of lead in paint, dust, and soil. Approved documented methodologies may be found in the United States Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, and the 1997 revision to Chapter 7 of the HUD Guidelines); Standard Specification for Wipe Sampling Materials for Lead in Surface Dust (ASTM Designation E1792); Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques (ASTM Designation E1728); Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques or equivalent method (ASTM Designation E1727); and/or other equivalent methods recognized by EPA, HUD, and/or the department.

(6) Arithmetic mean - The algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

(7) ASTM - American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, Pennsylvania, 19428.

(8) Bare soil - Soil not covered with grass, sod, or some other similar vegetation. Bare soil includes sand.

(9) Board - The Texas Board of Health.

(10) Certified lead abatement project designer - A person who has been certified by the department to prepare lead abatement project designs, occupant protection plans, and abatement reports.

(11) Certified lead abatement supervisor - A person who has been certified by the department to supervise and conduct lead abatements, and to prepare occupant protection plans and abatement reports.

(12) Certified lead abatement worker - A person who has been certified by the department to perform abatements.

(13) Certified lead firm - A company, contractor, partnership, corporation, sole proprietorship, association, or other business entity that performs or offers to perform lead-based paint activities, and that has been certified by the department.

(14) Certified lead inspector - A person who has been certified by the department to conduct lead inspections. Inspectors may also sample dust and soil for the purposes of abatement cleanup and clearance testing.

(15) Certified lead risk assessor - A person who has been certified by the department to conduct lead risk assessments, lead inspections and lead hazard screens. Risk assessors may also sample dust and soil for the purposes of lead abatement cleanup and clearance testing.

(16) Chewable surface - An interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

(17) Child-occupied facility - A building or part of a building constructed before 1978, including, but not limited to, a day-care center, preschool, or kindergarten classroom, that is visited regularly by the same child, six years of age or younger, at least two days in any calendar week if the visits are for at least:

(A) three hours each day; and

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(B) 60 hours each year.

(18) Clearance levels - Values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity. Clearance levels that are appropriate for the purposes of these regulations may be found in §295.212(d)(13) of this title (relating to Standards for Conducting Lead Based Paint Activities).

(19) Commissioner - The Texas Commissioner of Health.

(20) Common area - A portion of target housing or a child-occupied facility that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

(21) Common area group - A group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to hallways, stairwells, and laundry rooms.

(22) Complete certification application - An application that contains, at a minimum, an original signature (not photocopied, facsimiled, or electronically reproduced); a legible printed name and mailing address; any business or organization affiliation and mailing address; copy(ies) of any applicable required training course completion certificates issued by a department-accredited training provider within the specified time frames; documentation of any applicable required formal education in the form of a diploma, degree, or transcript; documentation of any applicable required work experience detailing job duties that includes verification contacts covering the minimum time frames required; documentation of any specified professional certification, professional engineer, or professional registration, if required; the appropriate certification fee; and, for lead firms, documentation of items required in §295.211(b)(1)-(3) of this title (relating to Lead Firm Certification Requirements), as applicable.

(23) Component or building component - Specific design or structural elements or fixtures of target housing or a child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built-in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

(24) Concentration - The relative content of a specific substance contained within a larger mass, such as the amount of the lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

(25) Containment - A regulated area that has been sealed and designed to prevent the release of lead-containing dust or materials into surrounding areas.

(26) Course agenda - An outline of the key topics to be covered during a training course, including the time allotted to teaching each topic.

(27) Course test - An evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(28) Course test blue print - Written documentation of the proportion of course test questions devoted to each major topic in the course curriculum.

(29) Department - The Texas Department of Health.

(30) Deteriorated paint - Any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

(31) Discipline - One of the specific types or categories of lead-based paint activities for which individuals may receive training from accredited programs and become certified by the department. For example, "lead worker" is a discipline.

(32) Distinct painting history - The application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component, room, or unit of a building structure.

(33) Dripline - The area within three feet surrounding the perimeter of a building.

(34) Elevated blood lead level (EBL) - An absorption of lead that is a confirmed concentration of lead in whole blood of 20 µg/dl (micrograms of lead per deciliter of whole blood) for a single venous test or of 15-19 µg/dl in two consecutive tests taken three to four months apart.

(35) ELNS - Environmental Lead Notification Section within the Environmental Lead Branch, Toxic Substances Control Division, Texas Department of Health.

(36) Encapsulant - A substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded covering material. Only encapsulant products that meet the performance standards developed by ASTM (E1796, E1795) shall be used for lead hazard reduction.

(37) Encapsulation - The application of an encapsulant.

(38) Enclosure - A process that makes lead-based paint inaccessible by providing a physical barrier that is mechanically attached to a surface.

(39) EPA - The United States Environmental Protection Agency.

(40) Federal laws and rules - Applicable federal laws and regulations adopted in these sections:

(A) Toxic Substances Control Act (15 United States Code §2681 et seq.) Title IV, and the rules adopted by the EPA under that law for authorization of state programs;

(B) Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992, and any regulations or requirements adopted by the HUD regarding eligibility for grants to states and local governments; and

(C) any other requirements adopted by a federal agency with jurisdiction over lead hazards.

(41) Friction surface - An interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(42) Guest instructor - An individual designated by the training program manager to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

(43) Hands-on skills assessment - An evaluation which tests the trainees' ability to perform satisfactorily the work practices and procedures used by a discipline, as well as any other skills covered in a training course.

(44) HEPA filter - A high-efficiency particulate air filter, capable of trapping and retaining 99.97% of mono-dispersed airborne particles 0.3 microns or larger in diameter.

(45) Historical records - Documentation which identifies the material makeup (including brand, color type, and lead content) and dates of application of paint and other surface coatings.

(46) HUD - The United States Department of Housing and Urban Development.

(47) HVAC - Heating, ventilation, and air conditioning systems.

(48) Impact surface - An interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

(49) Inspection - A surface-by-surface investigation by a certified lead inspector or a certified lead risk assessor to determine the presence of lead-based paint including a written report explaining the results of the investigation.

(50) Interim controls - A set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(51) Interior window sill - The portion of the horizontal window ledge that protrudes into the interior of the room.

(52) Lead Abatement -

(A) Includes any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(i) the removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and

(ii) all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures; and

(iii) abatement projects, which specifically include, but are not limited to:

(I) projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to target housing or child-occupied facilities that:

(-a-) shall result in the permanent elimination of lead-based paint, lead-contaminated dust or soil, and other lead-based paint hazards; or

(-b-) are described in clauses (i) and (ii) of this subparagraph.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(II) projects resulting in the permanent elimination of a lead-based paint hazard, lead-based paint, and lead-contaminated dust or soil, conducted by persons certified in accordance with §§295.206-295.211 of this title relating to the certification requirements unless such projects are covered by subparagraph (B) of this paragraph;

(III) projects resulting in the permanent elimination of a lead-based paint hazard, lead-based paint, and lead-contaminated dust or soil, conducted by persons who, through their company name or promotional literature, represent, advertise, or hold themselves to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by subparagraph (B) of this paragraph; or

(IV) projects involving the permanent elimination of lead-based paint hazards, lead-based paint, or lead-contaminated dust or soil, that are conducted in response to state or local abatement orders.

(B) Excludes:

(i) renovation, remodeling, or landscaping activities, which are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards;

(ii) interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards; and

(iii) demolition of target housing buildings and child-occupied facilities.

(53) Lead-based paint - Paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5% by weight.

(54) Lead-based paint activity - Inspection, testing, risk assessment, risk reduction, lead abatement project design or planning, abatement or removal, or creation of lead-based paint hazards.

(55) Lead-based paint hazard - Hazardous lead-based paint, dust-lead hazard or soil-lead hazard as identified below.

(A) Paint-lead hazard. A paint-lead hazard is any of the following:

(i) any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in subparagraph (B) of this paragraph.

(ii) any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame).

(iii) any chewable lead-based painted surface on which there is evidence of teeth marks.

(iv) any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(B) Dust-lead hazard. A dust-lead hazard is surface dust in a residential building or child-occupied facility that contains mass-per-area concentration of lead equal to or exceeding 40 micrograms per square foot ($\mu\text{g}/\text{ft}^2$) on floors or 250 $\mu\text{g}/\text{ft}^2$ on interior window sills based on wipe samples.

(C) Soil-lead hazard. A soil-lead hazard is bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 parts per million (ppm) in a play area or average of 1,200 ppm of bare soil in the rest of the yard based on soil samples.

(56) Lead-hazard screen - An activity conducted by a certified risk assessor that involves limited paint and dust sampling to determine the presence of a lead-based paint hazard.

(57) Living area - Areas of a target housing unit or a child-occupied facility used by one or more children six years of age or younger, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

(58) Loading - The quantity of a specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

(59) Mid-yard - An area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.

(60) Multi-family dwelling - A structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

(61) Non-profit - An entity which has demonstrated to any branch of the Federal Government or to a State, municipal, tribal or territorial government, that no part of its net earnings inure to the benefit of any private shareholder or individual.

(62) OSHA - The Occupational Safety and Health Administration of the United States Department of Labor.

(63) Permanently covered soil - Soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

(64) Person - An individual, corporation, company, contractor, subcontractor, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, governmental entity, or any other association of individuals.

(65) Play area - An area of frequent soil contact by children six years of age or less as indicated by, but not limited to, such factors including the following: the presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

(66) Principal instructor - The individual who has the primary responsibility for organizing and teaching a particular course.

(67) Recognized laboratory - An environmental laboratory recognized by EPA, pursuant to the Toxic Substances Control Act (TSCA) §405(b), as being capable of performing an analysis for lead content in materials, including paint, soil, and dust.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(68) Reduction - Any measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including, but not limited to, interim controls and abatement.

(69) Residential building - A building containing one or more residential dwellings.

(70) Residential dwelling - A dwelling that is:

(A) a detached single family dwelling unit, including attached structures such as porches and stoops; or

(B) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

(71) Risk assessment - An assessment consists of:

(A) an on-site investigation conducted by a certified risk assessor to determine the existence, nature, severity, and location of lead-based paint hazards; and

(B) a written report by the person or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

(72) Room - A separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least six inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.

(73) Soil Sample - a sample collected in a representative location using ASTM E1727, "Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques," or equivalent method.

(74) Start-date - The date that the lead abatement begins.

(75) Stop-date - The date that all dust-wipe clearance levels are achieved and reported by an EPA recognized laboratory for interior abatement, or for exterior abatement, the date that visual clearance levels are all achieved.

(76) Target housing - Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is six years of age or younger resides or is expected to reside in such housing) or any zero-bedroom dwelling. As defined in this section, target housing includes the terms residential dwelling, multi-family dwelling, and unit.

(77) Testing - The collection of paint, soil, or dust-wipe samples for determining the presence of lead in paint or lead-based paint hazards by an EPA recognized laboratory or the use of an XRF.

(78) Training curriculum - An established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

(79) Training hour - At least 50 minutes of actual teaching, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(80) Training manager - The individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

(81) TSCA - Toxic Substances Control Act (15 United States Code §2681 et seq) Title IV.

(82) Unit - A room or connected group of rooms used or intended to be used by a single tenant or owner.

(83) Visual inspection for clearance testing - The visual examination of a residential dwelling or a child-occupied facility following an abatement to determine whether or not the abatement has been successfully completed, as indicated by the absence of visible residue, dust, and debris.

(84) Visual inspection for risk assessment - The visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

(85) Weighted arithmetic mean - The arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example, the weighted arithmetic mean of a single surface sample containing $60 \mu\text{g}/\text{ft}^2$, a composite sample (three subsamples) containing $100 \mu\text{g}/\text{ft}^2$, and a composite sample (four subsamples) containing $110 \mu\text{g}/\text{ft}^2$ is $100 \mu\text{g}/\text{ft}^2$. This result is based on the equation $[60+(3*100)+(4*110)]/(1+3+4)$.

(86) Window trough - For a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The trough is sometimes referred to as the window "well."

(87) Wipe sample - A sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determinations by Atomic Spectrometry Techniques," or equivalent method, with an acceptable wipe material as defined in ASTM E1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust."

(88) Working days - Monday through Friday including holidays that fall on those days.

(89) Worksite - An interior or exterior area at a target housing or child-occupied facility where lead-based paint abatement activity is taking place or is scheduled to take place.

(90) X-Ray Fluorescence Analyzer (XRF) - An instrument used to determine the concentration of lead in a sample; readings are in milligrams per square centimeter (mg/cm^2).

(91) Zero-bedroom dwelling - Any residential dwelling in which the living area is not separated from the sleeping area. The term includes, but is not limited to, efficiencies, studio apartments, dormitory housing, military barracks, and rental of individual rooms in residential dwellings.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

§295.203. APPROVED FEDERAL DOCUMENTED METHODOLOGIES.

(a) The following approved federal documented methodologies provide information for conducting lead-based paint activities:

(1) "Guidelines for the Evaluation and Control of Lead-based Paint Hazards in Housing," United States Department of Housing and Urban Development (HUD), June 1995 (and 1997 Chapter 7 revision), issued pursuant to §1017 of the Residential Lead-Based Paint Hazard Reduction Act of 1992;

(2) "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust." American Society for Testing and Materials (ASTM) Designation E1792;

(3) "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques." ASTM Designation E1728; and

(4) "Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques or equivalent methods." ASTM Designation E1727.

(b) Copies of the documents in subsection (a) of this section are available for review at any department-accredited training provider or the Texas Department of Health, Toxic Substances Control Division, Austin, Texas, or any Texas Department of Health regional office and may be reviewed during normal business hours or may be purchased through ASTM.

§295.204. ACCREDITATION OF TRAINING PROGRAM PROVIDERS.

(a) Accreditation requirement.

(1) A training program provider may seek accreditation from the department to offer courses in any of the following disciplines:

(A) lead inspector;

(B) lead risk assessor;

(C) lead abatement supervisor;

(D) lead abatement project designer; and

(E) lead abatement worker.

(2) A training program provider may also seek accreditation to offer refresher courses for each of the disciplines listed in paragraph (1) of this subsection.

(3) A training program provider shall not provide, offer, or claim to provide department-accredited training courses for certification purposes without accreditation from the department as required under subsection (c) of this section.

(b) Fees. An annual fee for lead training program provider accreditation shall be \$500. The fee payment must accompany the application. After accreditation the fee shall be paid in full each year on or before the day of the month of the expiration date given on the certificate. After initial accreditation, an application and a fee of \$100 shall be submitted for each additional course discipline the training

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

provider wishes to teach. Applicants seeking a replacement accreditation certificate shall submit such a request in writing on a department-issued form along with the reissuance fee of \$20.

(c) Application process. The following are procedures a training program provider shall follow to receive department accreditation to offer lead-based paint activities courses.

(1) A training program provider seeking accreditation shall submit a written application to the department containing the following information:

(A) the training program provider's name, address, and telephone number;

(B) a list of courses for which the training provider is applying; and

(C) a statement signed by the training program manager certifying that the training program meets the minimum requirements established in subsection (d) of this section. If a training program provider uses EPA-developed model training materials, a statement certifying the use of these materials shall be submitted. If a training program provider does not use EPA-developed training materials, its application for accreditation shall include:

(i) a copy of the student and instructor manuals to be used for each course;
and

(ii) a copy of the course agenda for each course, which must include the time allotted for teaching each course topic.

(2) All training program providers shall include in their application for accreditation the following:

(A) a description of the facilities and equipment available for lecture and hands-on training;

(B) a copy of the course test blueprint for each course;

(C) a description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course;

(D) a copy of the quality control plan as described in subsection (d)(9) of this section;

(E) a statement certifying that copies of the approved documented methodologies listed in compliance with §295.203(a) of this title (relating to Approved Documented Methodologies) are on-site and available for review;

(F) documentation that the training manager and principal instructor(s) meet the requirements of subsection (d) of this section; and

(G) a specimen of the training certificate which will be given to students upon successful course completion and test passage.

(3) The department shall approve or disapprove an application for accreditation no more than 90 days after receiving a complete application from a training program provider. Upon approval, a certificate of accreditation shall be sent to the applicant within 30 days. Prior to disapproval, the department may, at its discretion, work with training program providers to address inadequacies in the application for accreditation. If necessary to determine compliance with this subsection the department

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

may also request additional materials retained by the training program provider under subsections (c) and (d) of this section. If a training program provider's application is disapproved, the program may reapply for accreditation at any time by following the procedures in subsections (b) and (c) of this section.

(4) A training program provider may apply for accreditation to offer courses or refresher courses in as many training disciplines as it chooses. A training program provider may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements and submits the additional fees cited in subsection (b) of this section.

(d) Minimum requirements for the accreditation of training program providers. For a training program provider to obtain and maintain accreditation from the department to offer courses in lead-based paint activities, the program shall meet the following minimum requirements for each discipline for which the program is seeking accreditation.

(1) The training program provider shall employ a training manager who has:

(A) at least two years of experience, education, or training in teaching workers or adults; or

(B) a bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, or business administration or program management; or

(C) two years of experience in managing an occupational health and safety training program specializing in environmental hazards; and

(D) demonstrated experience, education, or training in the construction industry including lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(2) The training program manager shall designate a qualified principal instructor for each course who has:

(A) demonstrated experience, education, or training in teaching workers or adults;

(B) successfully completed at least 16 hours of instruction from a trainer utilizing a lead-specific EPA model course curriculum; or at least 16 hours of lead-specific training from a department-accredited training provider; and

(C) at least one year of experience in a lead discipline.

(3) The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course material. The training program manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course. One individual may be employed as both the training manager and principal instructor if the individual possesses the qualifications listed in paragraphs (1) and (2) of this subsection.

(4) The following documents shall be recognized by the department as proof that training managers and principal instructors meet the relevant education, work experience, and/or training requirements specifically listed in paragraphs (1) and (2) of this subsection. This documentation must be submitted with the accreditation application and shall be retained and verified by the training program provider as required by the recordkeeping requirements contained at subsection (j) of this section. Those documents include the following:

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(A) official academic transcripts or diploma, as proof of meeting the education requirements;

(B) resumes, letters of reference, or documentation of work experience, as records of meeting the work experience requirements; and

(C) certificates from train-the-trainer courses and lead-specific training courses, as proof of meeting the training requirements.

(5) The training program provider shall ensure the availability of and provide adequate facilities for the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(6) To become accredited in the following disciplines, the training program provider shall provide training courses that meet the following training hour requirements:

(A) The lead inspector course shall last a minimum of 24 training hours, with a minimum of eight hours devoted to hands-on training. The curriculum for the inspector course is contained in subsection (e)(1) of this section.

(B) The lead risk assessor course shall last a minimum of 16 training hours. The curriculum for the risk assessor course is contained in subsection (e)(2) of this section, and must include at least four hours of hands-on training activities.

(C) The lead abatement supervisor course shall last a minimum of 32 training hours, with a minimum of eight hours devoted to hands-on training activities. The curriculum for the supervisor course is contained in subsection (e)(3) of this section.

(D) The lead abatement project designer course shall last a minimum of eight training hours. The curriculum for the project designer course is contained in subsection (e)(4) of this section.

(E) The lead abatement worker course shall last a minimum of 16 training hours, with a minimum of eight hours devoted to hands-on training activities. The curriculum for the worker course is contained in subsection (e)(5) of this section.

(7) For each course offered, the training program provider shall conduct a course test, and if applicable, a hands-on skills assessment at the completion of the course. Each individual must successfully complete the hands-on skills assessment and receive a passing score of 70% or above correct on the course test to pass any course.

(A) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in subsection (e) of this section.

(B) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.

(C) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(8) Training program providers shall issue unique course completion certificates approved by the department to each individual who passes the training course. The course completion certificate shall include:

(A) the name and a unique identification number or social security number of the individual;

(B) the name of the particular course that the individual completed;

(C) the date of course completion or test passage date (no other dates shall be listed);

(D) the name, address, and telephone number of the training program provider;

(E) a signed statement by the training program manager or principal instructor that the course meets the requirements of §295.204 of this title (relating to Accreditation of Training Program Providers); and

(F) the training program provider accreditation number.

(9) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(A) procedures for periodic revision of training materials and the course test to reflect innovations in the field; and

(B) procedures for the training manager's annual review of instructor competency.

(10) Training program providers must offer courses which teach the standards for conducting lead-based paint activities contained in §295.212 of this title (relating to Standards for Conducting Lead-Based Paint Activities), and other such standards developed by EPA and HUD. These standards shall be taught in the appropriate courses to provide trainees with the knowledge needed to perform the lead-based paint activities they are responsible for conducting.

(11) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in subsection (e) of this section.

(12) The training program manager shall allow the department to audit the training program at any reasonable time to verify the contents of the application for accreditation as described in subsection (c) of this section and to verify that the requirements of subsection (e) of this section are being met.

(13) If the applicant is a Texas corporation, a certificate of good standing issued by the Texas State Comptroller's Office must be submitted with the application for accreditation.

(14) The training program manager shall furnish the department with a copy of all scheduled courses and shall notify the department at least 24 hours in advance of any course cancellations or changes. Course schedules shall be postmarked or faxed to the department at least seven working days prior to conducting any course on the schedule. In the event that a training course must be scheduled immediately due to an emergency, notification to the department must be made as soon as possible, but no less than 48 hours prior to commencement of the course. Written justification

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

for not notifying the department seven working days in advance must be provided with the emergency training request.

(15) The training program manager shall submit to the department a list of those individuals successfully completing a course including the name, social security number (optional) or other identifying information, and the date of course completion postmarked or faxed to the department within ten working days of the completion of the course.

(e) Minimum training curriculum requirements. To become accredited to offer lead-based paint activities instruction in the specific disciplines listed in paragraphs (1)-(5) of this subsection, training program providers must ensure that their courses of study include the following course topics. Requirements beginning with an asterisk (*) indicate areas that require hands-on activities as an integral component of the course.

(1) Lead inspector instruction:

(A) role and responsibilities of the inspector;

(B) background information on lead and its adverse health effects;

(C) background information regarding federal, state, and local regulations and guidance that pertain to lead-based paint and lead-based paint activities including the Texas Environmental Lead Reduction Rules;

(D) *lead-based paint inspection methods, including selection of rooms and components for sampling or testing;

(E) *paint, dust, and soil sampling methodologies;

(F) *clearance standards and testing, including random sampling;

(G) *preparation of the written final inspection report; and

(H) recordkeeping.

(2) Lead risk assessor instruction:

(A) role and responsibilities of the risk assessor;

(B) collection of background information to perform a risk assessment;

(C) sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food;

(D) *visual inspection for the purposes of identifying potential sources of lead-based paint hazards;

(E) lead hazard screen protocol;

(F) *sampling for other sources of lead exposure;

(G) *interpretation of lead-based paint and other lead sampling results, including all applicable state and federal guidance or regulations pertaining to lead-based paint hazards;

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(H) development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards; and

(I) preparation of a final risk assessment report.

(3) Lead abatement supervisor instruction:

(A) role and responsibilities of the supervisor;

(B) background information on lead and its adverse health effects;

(C) background information regarding federal, state, and local regulations and guidance that pertain to lead-based paint abatement including the Texas Environmental Lead Reduction Rules;

(D) liability and insurance issues relating to lead-based paint abatement;

(E) contract specifications and cost estimation;

(F) community relations;

(G) project management and supervisory techniques;

(H) *risk assessment and inspection report interpretation;

(I) development and implementation of an occupant protection plan and abatement report;

(J) *lead-based paint hazard recognition and control;

(K) *lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices;

(L) *interior dust abatement/cleanup or lead-based paint hazard control and reduction methods;

(M) *soil and exterior dust abatement or lead-based paint hazard control and reduction methods;

(N) clearance standards and testing;

(O) cleanup and waste disposal; and

(P) recordkeeping.

(4) Lead abatement project designer instruction:

(A) role and responsibilities of the project designer;

(B) contract specifications and cost estimation for abatement projects;

(C) development and implementation of an occupant protection plan for abatement projects;

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(D) lead-based paint abatement and lead hazard reduction methods, including restricted practices for abatement projects;

(E) interior dust abatement/cleanup or lead hazard control and reduction methods for abatement projects;

(F) clearance standards and testing for abatement projects; and

(G) integration of lead-based paint abatement methods with modernization and rehabilitation projects for abatement projects.

(5) Lead abatement worker instruction:

(A) role and responsibilities of the lead abatement worker;

(B) background information regarding lead and its adverse health effects;

(C) background information regarding federal, state, and local regulations and guidance that pertain to lead-based paint abatement including the Texas Environmental Lead Reduction Rules;

(D) *lead-based paint hazard recognition and control;

(E) *lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices;

(F) *interior dust abatement methods/cleanup or lead-based paint hazard reduction; and

(G) *soil and exterior dust abatement methods or lead-based paint hazard reduction.

(f) Minimum requirements for the accreditation of refresher training program providers. A training program provider may apply for accreditation to teach as many different refresher training courses as it chooses. To teach an accredited refresher course, a training program provider must be accredited, or concurrently applying for accreditation, to provide instruction in the corresponding full course (e.g., lead-based paint inspector, abatement supervisor). To obtain department accreditation to offer refresher training, a training program provider must meet the following minimum requirements.

(1) Each refresher course shall review the curriculum topics of the full-length courses listed under subsection (e) of this section, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(A) an overview of current safety practices relating to lead-based paint activities in general as well as discipline-specific information;

(B) current laws and regulations relating to lead-based paint activities in general as well as discipline-specific information; and

(C) current technologies relating to lead-based paint activities in general as well as discipline-specific information.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(2) Each refresher course, except for the project designer course, shall last a minimum of eight training hours. The project designer refresher course shall last a minimum of four training hours. A hands-on assessment, if required in the original course, must also be conducted within this period.

(3) Each student shall be required to pass a course test that covers all of the topics contained in the course. Passing students shall be provided with a refresher course completion certificate.

(4) A training program provider seeking refresher course accreditation shall submit to the department a written application containing the following:

(A) the training program provider's name, address, and telephone number;

(B) a list of the refresher courses for which it is applying for accreditation;

(C) a copy of the table of contents and course-identifying cover sheet of the student and instructor manuals for each course;

(D) a statement signed by the training program manager certifying that the program complies at all times with all requirements of subsection (f) of this section; and

(E) the course test blueprint for each refresher course.

(5) If a training program provider applies for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course, the department shall use the approval procedure described in subsection (c) of this section.

(6) If an application for refresher training accreditation is received apart from an application for accreditation as described in subsection (c) of this section, the department shall approve or disapprove a request for refresher training accreditation within 90 days of receiving a complete application. Upon approval, a certificate of refresher training accreditation shall be sent to the applicant within 30 days. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. The department may, at its discretion, work with training program providers to address inadequacies in the application for refresher accreditation. If a training program provider's application is disapproved, the training program provider may reapply at any time after the reason for disapproval has been corrected.

(g) Re-accreditation of training programs.

(1) Unless re-accredited, a training program provider's accreditation shall expire three years after the date of issuance. If a training program meets the requirements of this section, the training program provider shall be re-accredited.

(2) A training program provider seeking re-accreditation shall submit an application to the department no later than 30 days before its accreditation expires. At least 60 days before the date an accreditation expires, the department, as a service to the accredited trainer, shall send a reminder notice to the accredited trainer, by first class mail to the last known address of the accredited trainer. Failure of the department to send the reminder notice creates no liability to the department and does not relieve the accredited trainer from paying the accreditation renewal fee in a timely manner. Training accreditations which have expired may be renewed under the following conditions:

(A) a training program whose accreditation has been expired for 90 days or less may renew the accreditation by paying to the department a renewal fee that is equal to 1-1/2 times the normally required fee;

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(B) a training program whose accreditation has been expired for more than 90 days but less than one year may renew the accreditation by paying to the department a renewal fee that is equal to two times the normally required renewal fee; and

(C) a training program whose accreditation has been expired for one year or more may not renew the accreditation by paying a renewal fee only. To become re-accredited the training program must comply with the current requirements placed on a new applicant.

(3) The training program provider's application for re-accreditation shall contain:

(A) the training program provider's name, address, and telephone number;

(B) a list of courses for which it is applying for re-accreditation;

(C) a description of any changes or updates to the training facility or equipment since its last application was approved; and

(D) a certified statement signed by the program manager stating:

(i) the training program provider will at all times comply with all requirements in subsections (d) and (f) of this section; and

(ii) the recordkeeping and reporting requirements of subsection (j) of this section will be followed.

(4) The department may audit the training program provider at any reasonable time to verify the contents of the application for re-accreditation as described in paragraph (3) of this subsection.

(h) Suspension, deaccreditation, and modification of accredited training programs.

(1) The department may, after notice and an opportunity for hearing, suspend, deaccredit, or modify a training program provider's accreditation if a training program, training manager, or other person with supervisory authority over the training program has:

(A) misrepresented the contents of a training course to the department and/or the student population;

(B) failed to submit required information or notifications in a timely manner;

(C) failed to maintain required records;

(D) falsified accreditation records, instructor qualifications, or other accreditation information;

(E) failed to comply with the training standards and requirements in this section;

(F) failed to comply with federal, state, or local lead-based paint statutes or regulations;

(G) made false or misleading statements to the department in its application for accreditation or re-accreditation which the department relied upon in approving the application; or

(H) failed to pay the annual fee.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(2) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this subsection, evidence of a failure to comply with relevant statutes or regulations.

(i) Procedures for suspension, deaccreditation or modification of training program accreditation.

(1) When the department decides to suspend, deaccredit, or modify the accreditation of a training program, it shall notify the affected entity in writing of the following:

(A) the assertion of laws and facts upon which the suspension, deaccreditation, or modification is based;

(B) the commencement date and duration of the suspension, deaccreditation, or modification;

(C) actions, if any, which the affected entity may take to avoid suspension, deaccreditation, or modification, or to receive accreditation in the future;

(D) the opportunity and method for requesting a hearing prior to final departmental action to deaccredit, suspend, or modify accreditation; and

(E) any additional information, as appropriate, which the department may provide.

(2) If a hearing is requested by the accredited training program pursuant to subsection (h)(1) of this section, the person charged shall be given the opportunity for a hearing conducted in accordance with the department's Fair Hearing Procedures found at 25 TAC, §§1.51-1.55.

(j) Training program recordkeeping requirements.

(1) Accredited training program providers shall maintain and make available to the department, upon request, the following records:

(A) all documents specified in subsection (d)(4) of this section that demonstrate the qualifications listed in subsections (d)(1) and (d)(2) of this section of the training manager and principal instructors;

(B) current curriculum/course materials and documents reflecting any changes made to these materials;

(C) the course test blueprint;

(D) information on how the hands-on assessment is conducted including, but not limited to, who conducts the assessment, how the skills are graded, what facilities are used, types of equipment used, and the pass/fail rate;

(E) the quality control plan as described in subsection (d)(9) of this section;

(F) results of each student's hands-on skills assessments and course tests, and a record of each student's course completion certificate and test passage date; and

(G) any other material not listed in subparagraphs (A)-(F) of this paragraph that was submitted to the department as part of the program's application for accreditation.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(2) The training program shall retain the records required by paragraph (1) of this subsection at the location (i.e., address) specified on the training program accreditation application (or as modified in accordance with paragraph (3) of this subsection) for a minimum of three years and six months.

(3) The training program shall notify the department in writing within 30 days of relocating its business or transferring the records.

§295.205. CERTIFICATION: APPLICATIONS, DENIALS, AND RENEWALS.

(a) General requirements. Applications for initial or renewal certification under these sections must be made on the appropriate forms provided by the Texas Department of Health (department). The application shall be signed by the applicant and must be accompanied by a check or money order, made payable to the Texas Department of Health, for the amount of the initial or renewal certification fee. Only applications that are complete shall be considered by the department; the duty to meet all requirements for certification rests with the applicant. For specific requirements for the various certification disciplines, refer to the sections applicable to that discipline relating to certification requirements.

(b) Inquiries. Potential applicants who wish to discuss or obtain information concerning qualification requirements may do so by calling the department's Environmental Lead Branch at (512) 834-6612 or (888) 778-9440 (toll-free in Texas). The applicant may also visit the branch's website at <http://www.tdh.state.tx.us/beh/lead> to obtain information and to download forms.

(c) Denials. The department may deny an application for initial or renewal certification if the applicant fails to meet the standards established by these sections. If a time period is specified, applicants may not reapply for that period.

(1) past history of assessed penalties from violations of these sections by the applicant and/or the applicant's employees or agents - three years;

(2) evidence that the applicant cannot be legally employed in the United States;

(3) fraud, misrepresentation, or deception in obtaining, attempting to obtain, or renewing a certificate - three years;

(4) failure to submit the required appropriate education and/or work experience documentation within 60 days of a written request by the department for consideration toward granting certification;

(5) failure to submit the required fee with an application for certification or when renewing a certification, including any additionally required late fees;

(6) failure to maintain or to permit inspection of the records required of all certified persons - one year;

(7) employing or permitting an unauthorized person or individual to work on any lead project or operation - one year;

(8) engaging in or attempting to engage in an lead-related activity without a valid certification - three years;

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(9) failure to comply with any rule adopted by the board or order issued by the department – one year;

(10) failure to meet the terms of reciprocity as described in §295.215(a) of this title (relating to Reciprocity);

(11) conviction within the past five years of a felony or a misdemeanor related to conditions for which a person engaged in lead activities - three years;

(12) failure of a certified person to complete their responsibilities during a lead project or operation due to insufficient financial resources- three years;

(13) failure to prevent lead contamination of areas adjacent to the abatement area - three years;

(14) failure to pass the state certification examination with a score of at least 70% correct after three attempts within six months of completing the appropriate training course(s);

(15) engaging in cheating practices on any state certification examination - three years;

(16) failure to provide a certification application with an original signature of the applicant (not photocopied, facsimiled, or electronically reproduced);

(17) failure to successfully complete the required appropriate training course(s) from a department-accredited training program provider for consideration toward granting certification;

(18) failure to successfully complete the required appropriate refresher training course(s) from a department-accredited training program provider for consideration toward granting renewal certification;

(19) failure to successfully complete the required appropriate refresher training course(s) from a department-accredited training program provider no sooner than 180 days prior to the certification's three-year expiration date or within one year beyond the three-year certification expiration date;

(20) failure to submit a complete renewal certification application within one year beyond the three-year certification expiration date of the previous certification;

(21) failure to submit a complete initial certification application within six months after passing the state certification examination with a score of at least 70% correct;

(22) failure to submit a complete initial certification application, including documentation of any additionally required refresher training course(s), within one year after completing the additionally required refresher training course, and within three years of passing the state certification examination with a score of at least 70% correct; or

(23) failure to submit a complete initial certification application, including documentation of any additionally required refresher training course(s), within one year after completing the additionally required refresher training course(s), and within three years of completing the original training course.

(d) Administrative penalty. In accordance with §295.220 of this title (relating to Compliance: Administrative Penalty) an administrative penalty may be assessed, for fraud or misrepresentation in obtaining, attempting to obtain, or renewing a certification.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(e) Appeal of certification denial. A denial of an initial or renewal certification application may be appealed by the applicant. The hearing will be conducted as outlined in subsection (f)(5) of this section. The details for requesting a hearing will be included in each letter of denial.

(f) Processing initial or renewal certification applications.

(1) Time periods. Applications for initial or renewal certification will be processed within 60 days of receipt by issuing a certification or by providing a written notice to the applicant outlining the reasons why the application is deficient. In cases of a deficient application, the certification will be issued within 60 days of the applicant meeting all the certification requirements including receipt of all acceptable documents at the department.

(2) Reimbursement of fees. Initial or renewal certification application fees will be refunded only when the department does not process a completed application in the time period specified, or an applicant is not able to meet the certification requirements. If fee amounts paid to the department are in excess of the correct fee amount, the excess payment will be reimbursed. Reimbursement of fees paid by applicants not meeting the certification requirements will be made, less a \$25 administrative fee.

(3) Denial of an initial or renewal certification application due to abandonment of the application does not constitute grounds for reimbursement. Abandonment is defined as failure to respond to a written request of the department by the applicant for a period of 90 days.

(4) Appeal of reimbursement denial. If a request for reimbursement authorized by this subsection is denied, the applicant may then appeal to the commissioner of health for a resolution of the dispute. The applicant shall give written notice to the commissioner by writing to the chief, Environmental Lead Branch, the designated representative of the commissioner, requesting reimbursement of all filing fees paid because his/her initial or renewal certification application was not processed within the prescribed time period or the applicant can prove that he/she did respond to a written request of the department within 90 days of that request. The branch chief shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods or evidence that the application was abandoned. The commissioner will determine the final action and provide written notification of his/her decision to the applicant and the branch chief.

(5) Contested case hearing. If at any time during the processing of the initial or renewal certification application, a contested case proceeding arises, the applicant may request a hearing in accordance with the department's Fair Hearing Procedures found at 25 TAC, §§1.51 – 1.55.

(g) Reminder notices. Not later than the 60th day before the date a person's or firm's three-year certification is scheduled to expire, the department, as a service to the certified person or firm, shall send written notice of the impending expiration to the person or firm at the person's or firm's last known address according to the records of the department. At least 60 days before the end of years one and two of the three-year certification period, the department, as a service to the certified person or firm, shall send a reminder notice of the impending due-date of their annual fee, including an annual fee payment coupon, to the certified person's or firm's last known address according to the records of the department. It is the responsibility of the certified person or firm to keep the department informed of their current address, or change of address for all certification categories, and to take action to keep their certification current or renew their certification whether or not they have received the notification from the department. Failure by the department to send the timely notice, including any annual fee payment coupon, creates no liability to the department and does not relieve the applicant of the obligation to file a timely renewal application or making a timely annual fee payment. The reminder notice will state:

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(1) the type of certification requiring payment of the annual fee or certification renewal fee;

(2) the time period allowed for payment of the annual fee or certification renewal fee; and

(3) the amount of the annual fee or certification renewal fee.

(h) Certification renewal requirements.

(1) A certification may be renewed for an additional three-year term provided that the person:

(A) is qualified to be certified;

(B) pays to the department the proper certification renewal fee;

(C) submits to the department a certification renewal application on the prescribed form along with all required documentation;

(D) successfully completes the requirements for certification renewal;

(E) has complied with all final orders resulting from any violations of these sections; and

(F) submits a copy of the refresher training course certificate(s), if required.

(2) Expired certifications. A person whose certification has been expired for:

(A) 90 days or less may renew the certification by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(B) more than 90 days but less than one year may renew the certification by paying to the department a renewal fee that is two times the normally required renewal fee.

(C) one year or more may not renew their certification. The person may become re-certified by complying with the current requirements and procedures, including any examination requirements, for an original certification.

(3) Renewal by out-of-state practitioner. A person who was certified in this state, moved to another state, and is currently certified and has been in practice in the other state for the two years preceding the date of application, may obtain a new certification without any applicable reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the certification.

(i) Prohibition. Practicing with an expired certification is prohibited. If a certification holder makes a timely and sufficient application for the renewal of the certification by the expiration date, the current certification in his/her possession does not expire until the application has been finally approved or denied by the department. Certifications which have been expired for a period of one year or more beyond the three-year expiration date cannot be renewed. The person or firm whose certification has been expired for one year or more may become re-certified by complying with the current requirements and procedures, including any examination requirements, for an original certification.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(j) Replacements. A certified person or firm may obtain a replacement certificate and/or identification (ID) card by submitting such request in writing on a department-issued form along with the reissuance fee of \$20 for each official document requested.

(k) Retention of control. The department may, at any time after the filing of any application and before the expiration of any certification, require:

(1) additional written information and assurances; and

(2) cooperation with any inspections initiated by the department, or the production of any documentary or other evidence that the department considers necessary to determine whether the certification should be granted, delayed, denied, modified, suspended or revoked.

(l) Change of name, address, telephone number, business name, organization affiliation, and/or firm's owner or authorized agent. The Texas Department of Health (department) must be notified in writing by the certified person or firm of these changes from that person's or firm's original application for certification on file at the department no later than 60 days after that change. Failure to maintain current information on file with the department may result in the suspension of the certification.

§295.206. LEAD INSPECTOR: CERTIFICATION REQUIREMENTS.

(a) Certification requirements. A person must be certified by the department as a lead inspector to engage in lead inspection of target housing and child-occupied facilities. Such certification is valid for a period of three years from the date the certification application is approved by the department, provided that the appropriate fee is paid each year.

(b) Specific requirements of applicants for certification as lead inspectors:

(1) successfully complete a lead inspector training course and receive a course completion certificate from a department-accredited training program provider;

(2) pass the state certification examination for lead inspectors; and

(3) submit a complete application for lead inspector certification to the department on a department-issued form and pay the appropriate certification fee within six months of passing the state certification examination.

(c) State certification examination.

(1) In order to take the certification examination for lead inspectors, an individual must first successfully complete a lead inspector course and receive a course completion certificate from a department-accredited training provider.

(2) The individual shall then register for the examination on a department-issued form prior to taking the examination, provide a copy of the lead inspector course completion certificate with the registration form, and receive confirmation from the department that the individual is registered for that particular examination and examination date prior to taking the examination.

(3) A score of at least 70% correct must be achieved to pass the examination.

(4) An individual must achieve a passing score on the certification examination in no more than three attempts within six months of receiving a course completion certificate.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(5) If an individual does not pass the certification examination within six months of receiving a course completion certificate, the individual must retake the original lead inspector course from a department-accredited training provider and receive a course completion certificate prior to retaking the certification examination.

(6) An examination fee of \$50 for each examination attempt shall be submitted to the department with the department-issued examination registration form. The required fee must be in the form of a check or money order made payable to the Texas Department of Health. The required fee must be received by the department prior to taking the examination. If the required fee is not received by the department prior to taking the examination, the examination results will not be released and become official until payment is received.

(7) Not later than the 30th day after the date a person takes a certification examination, the department shall notify the person of the results of the examination.

(8) A person who fails the examination shall be allowed an opportunity immediately following their notification of the results to analyze their performance on the examination. Further analysis of the examination results may be provided by the department upon written request by the examinee.

(9) A complete lead inspector certification application must be received by the department within six months of passing the lead inspector state examination in order for the examination results to be eligible for consideration toward granting certification.

(A) A person who fails to submit a complete certification application within 6 months of passing the lead inspector state examination, will be required to additionally complete a lead inspector refresher training course from a department-accredited training program provider and receive a course completion certificate. The individual must then submit a complete certification application, including a course completion certificate of the additionally required lead inspector refresher training course, within six months of completing this refresher course.

(B) If the applicant has not submitted a complete lead inspector certification application within three years of passing the state lead inspector examination, including documentation of any additionally required refresher training course, the person will again be subject to the certification requirements of subsection (b) of this section in order to be granted certification.

(d) Responsibilities. The certified lead inspector shall be responsible for the following:

(1) conduct soil and dust abatement clearance sampling following procedures in §295.212 of this title (relating to Standards for Conducting Lead-Based Paint Activities);

(2) conduct lead-based paint inspections of target housing and child-occupied facilities that measure the concentration of lead in paint on a surface-by-surface basis; and

(3) complete a written inspection report as described in §295.212(a)(4) of this title (relating to Standards for Conducting Lead-Based Paint Activities).

(e) Application for certification renewal. To become re-certified, the certified inspector must successfully complete an inspector refresher training course from a department-accredited training program provider no sooner than 180 days prior to the inspector's certification expiration date and follow the procedures contained in §295.205 of this title (relating to Certification: Applications, Denials, and Renewals).

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(1) If a certification holder makes a timely and sufficient application for the renewal of the certification by their current certification's expiration date, the current certification in his/her possession does not expire until the application has been finally approved or denied by the department. The person whose certification has been expired for less than one year may renew their certification by complying with the requirements of §295.205(h) of this title. Certifications that have been expired for a period of one year or more beyond the three-year expiration date cannot be renewed. The person whose certification has been expired for a period of one year or more may become re-certified by complying with the current requirements and procedures, including any examination requirements, for an original certification, subject to the certification requirements of subsection (b) of this section.

(2) To maintain certification, the certified lead inspector must seek re-certification by submitting a complete certification renewal application to the department no later than 30 days before the certification expires. If the certified lead inspector does not submit an application for re-certification by that date, the application will not be deemed timely filed and the department cannot guarantee that the application will be reviewed and acted upon before the end of the lead inspector's certification period.

(f) Fees. The annual fee for lead inspector certification shall be \$150. The fee must accompany the initial or renewal certification application the first year, and accompany the annual fee payment coupon issued by the department for years two and three. In order to retain certification, all annual fees must be paid as required. Upon payment of each annual fee, a new identification (ID) card will be issued and shall be valid for the time period for which the annual fee was paid. Failure to make a timely annual fee payment may result in the suspension of the certification.

§295.207. LEAD RISK ASSESSOR: CERTIFICATION REQUIREMENTS.

(a) Certification requirements. A person must be certified by the department as a lead risk assessor to engage in lead risk assessment or lead hazard screens of target housing and child-occupied facilities. Such certification is valid for a period of three years from the date the certification application is approved by the department, provided that the appropriate fee is paid each year.

(b) Specific requirements of applicants for certification as lead risk assessors:

(1) successfully complete a lead inspector and a lead risk assessor training course, and receive course completion certificates from a department-accredited training program provider;

(2) pass the state certification examination for lead risk assessors; and

(3) meet or exceed the following additional education and/or experience requirements:

(A) a bachelor's degree and one year of experience in a related field (e.g. lead, asbestos, public health, environmental remediation work, or building construction trades); or

(B) an associate's degree and two years of experience in a related field (e.g. lead, asbestos, public health, environmental remediation work, or building construction trades); or

(C) a high school diploma (or equivalent), plus at least three years of experience in a related field (e.g. lead, asbestos, public health, environmental remediation work, or building construction trades); or

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(D) certification as an industrial hygienist, a professional engineer, a public health nurse, a professional registered sanitarian, a certified safety professional, a registered architect, or an environmental scientist.

(4) submit a complete application for lead risk assessor certification to the department on a department-issued form and pay the appropriate certification fee within six months of passing the state certification examination.

(c) State certification examination.

(1) In order to take the certification examination for risk assessors, an individual must first successfully complete lead inspector and lead risk assessor courses and receive course completion certificates from a department-accredited training provider and meet or exceed the education and experience requirements in subsection (b)(3) of this section.

(2) The individual shall then register for the examination on a department-issued form prior to taking the examination, provide copies of the lead inspector and lead risk assessor course completion certificates with the registration form, and receive confirmation from the department that the individual is registered for that particular examination and examination date prior to taking the examination.

(3) A score of at least 70% correct must be achieved to pass the examination.

(4) An individual must achieve a passing score on the certification examination in no more than three attempts within six months of receiving a course completion certificate.

(5) If an individual does not pass the certification examination within six months of receiving course completion certificates, the individual must retake the original lead inspector and lead risk assessor courses from a department-accredited training provider and receive course completion certificates prior to retaking the certification examination.

(6) An examination fee of \$50 for each examination attempt shall be submitted to the department with the department-issued examination registration form. The required fee must be in the form of a check or money order made payable to the Texas Department of Health. The required fee must be received by the department prior to taking the examination. If the required fee is not received by the department prior to taking the examination, the examination results will not be released and become official until payment is received.

(7) Not later than the 30th day after the date a person takes a certification examination, the department shall notify the person of the results of the examination.

(8) A person who fails the examination shall be allowed an opportunity immediately following their notification of the results to analyze their performance on the examination. Further analysis of the examination results may be provided by the department upon written request by the examinee.

(9) A complete lead risk assessor certification application must be received by the department within six months of passing the lead inspector state examination in order for the examination results to be eligible for consideration toward granting certification.

(A) A person who fails to submit a complete certification application within 6 months of passing the lead risk assessor state examination, will be required to additionally complete lead inspector and lead risk assessor refresher training courses from a department-accredited training program provider and receive course completion certificates. The individual must then submit a

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

complete certification application, including course completion certificates of the additionally required lead inspector and lead risk assessor refresher training courses, within six months of completing these refresher courses.

(B) If the applicant has not submitted a complete lead risk assessor certification application within three years of passing the state lead risk assessor examination, including documentation of any additionally required refresher training courses, the person will again be subject to the certification requirements of subsection (b) of this section in order to be granted certification.

(d) Responsibilities. The certified lead risk assessor shall be responsible for the following:

(1) conduct a risk assessment and other lead hazard assessment activities (such as screening a residence for lead hazard) in target housing and child-occupied facilities;

(2) complete a written risk assessment report as described in §295.212(c)(11) of this title (relating to Standards for Conducting Lead-Based Paint Activities);

(3) interpret the results of assessments;

(4) identify hazard control strategies to reduce or eliminate lead exposures;

(5) conduct post-abatement soil and dust clearance sampling and evaluate the results; and

(6) perform the same duties of a certified lead inspector as specified in §295.206(d) of this title (relating to Lead Inspector: Certification Requirements).

(e) Application for certification renewal. To become re-certified, the certified risk assessor must successfully complete lead inspector and lead risk assessor refresher training courses from a department-accredited training program provider no sooner than 180 days prior to the risk assessor's certification expiration date and follow the procedures contained in §295.205 of this title (relating to Certification: Applications, Denials, and Renewals).

(1) If a certification holder makes a timely and sufficient application for the renewal of the certification by their current certification's expiration date, the current certification in his/her possession does not expire until the application has been finally approved or denied by the department. The person whose certification has been expired for less than one year may renew their certification by complying with the requirements of §295.205(h) of this title. Certifications that have been expired for a period of one year or more beyond the three-year expiration date cannot be renewed. The person whose certification has been expired for a period of one year or more may become re-certified by complying with the current requirements and procedures, including any examination requirements, for an original certification, subject to the certification requirements of subsection (b) of this section.

(2) To maintain certification, the certified lead risk assessor must seek re-certification by submitting a complete certification renewal application to the department no later than 30 days before the certification expires. If the certified lead risk assessor does not submit an application for re-certification by that date, the application will not be deemed timely filed and the department cannot guarantee that the application will be reviewed and acted upon before the end of the lead risk assessor's certification period.

(f) Fees. The annual fee for lead risk assessor certification shall be \$300. The fee must accompany the initial or renewal certification application the first year, and accompany the annual fee payment coupon issued by the department for years two and three. In order to retain certification, all annual fees must be paid as required. Upon payment of each annual fee, a new identification (ID) card

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

will be issued and shall be valid for the time period for which the annual fee was paid. Failure to make a timely annual fee payment may result in the suspension of the certification.

§295.208. LEAD ABATEMENT SUPERVISOR: CERTIFICATION REQUIREMENTS.

(a) Certification requirements. A person must be certified by the department as a lead abatement supervisor to engage in such activity in target housing and child-occupied facilities. Such certification shall be valid for a period of three years from the date the certification application is approved by the department, provided that the appropriate fee is paid each year.

(b) Specific requirements of applicants for certification as lead abatement supervisors:

(1) successfully complete a lead abatement supervisor training course and receive a course completion certificate from a department-accredited training program provider;

(2) pass the state certification examination for lead abatement supervisors;

(3) meet or exceed the following additional experience requirements:

(A) one year of experience as a certified lead abatement worker; or

(B) at least two years experience in a related field (e.g. lead, asbestos, or environmental remediation work), or in the building construction trades; and

(4) submit a complete application for lead abatement supervisor certification to the department on a department-issued form and pay the appropriate certification fee within six months of passing the state certification examination.

(c) State certification examination.

(1) In order to take the certification examination for lead abatement supervisors, an individual must first successfully complete a lead abatement supervisor course and receive a course completion certificate from a department-accredited training provider and meet or exceed the experience requirement of subsection (b)(3) of this section.

(2) The individual shall then register for the examination on a department-issued form prior to taking the examination, provide a copy of the lead abatement supervisor course completion certificate with the registration form, and receive confirmation from the department that the individual is registered for that particular examination and examination date prior to taking the examination.

(3) A score of at least 70% correct must be achieved to pass the examination.

(4) An individual must achieve a passing score on the certification examination in no more than three attempts within six months of receiving a course completion certificate.

(5) If an individual does not pass the certification examination within six months of receiving a course completion certificate, the individual must retake the original lead abatement supervisor course from a department-accredited training provider and receive a course completion certificate prior to taking the certification examination.

(6) An examination fee of \$50 for each examination attempt shall be submitted to the department with the department-issued examination registration form. The required fee must be in the form of a check or money order made payable to the Texas Department of Health. The required fee

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

must be received by the department prior to taking the examination. If the required fee is not received by the department prior to taking the examination, the examination results will not be released and become official until payment is received.

(7) Not later than the 30th day after the date a person takes a certification examination, the department shall notify the person of the results of the examination.

(8) A person who fails the examination shall be allowed an opportunity immediately following their notification of the results to analyze their performance on the examination. Further analysis of the examination results may be provided by the department upon written request by the examinee.

(9) A complete lead abatement supervisor certification application must be received by the department within six months of passing the lead inspector state examination in order for the examination results to be eligible for consideration toward granting certification.

(A) A person who fails to submit a complete certification application within six months of passing the lead abatement supervisor state examination, will be required to additionally complete a lead abatement supervisor refresher training course from a department-accredited training program provider and receive a course completion certificate. The individual must then submit a complete certification application, including a course completion certificate of the additionally required lead abatement supervisor refresher training course, within six months of completing this refresher course.

(B) If the applicant has not submitted a complete lead abatement supervisor certification application within three years of passing the state lead abatement supervisor examination, including documentation of any additionally required refresher training course, the person will again be subject to the certification requirements of subsection (b) of this section in order to be granted certification.

(d) Responsibilities. The certified lead abatement supervisor shall be responsible for the following:

(1) identify the most appropriate course(s) of action to eliminate identified lead hazards;

(2) ensure that all abatement activities in target housing and child-occupied facilities are completed according to the standards outlined in §295.212 of this title (relating to Standards for Conducting Lead-Based Paint Activities);

(3) supply personal protection equipment to employees, train employees who perform lead-related activities in the use of equipment, and supervise their compliance;

(4) ensure that abatement activities are conducted in accordance with regulatory requirements;

(5) prepare a written abatement report as described in §295.212(d)(11) of this title;

(6) develop an occupant protection plan as described in §295.212(d)(5) of this title;

(7) be available at all times as described in §295.212(d)(2) of this title when abatement activities are being conducted;

(8) ensure completion of all abatement activities according to these sections;

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(9) assume the duties of lead abatement workers or perform activities affecting lead materials;

(10) cooperate with department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.218 of this title (relating to Compliance: Inspections and Investigations);

(11) maintain standards of operation, including Environmental Protection Agency (EPA) and Occupational Safety and Health Administration of the United States Department of Labor (OSHA) regulations; and

(12) ensure that each lead abatement worker under their supervision has a department-issued certification identification (ID) card and one form of government-issued photo ID at the worksite.

(e) Application for certification renewal. To become re-certified, the certified lead abatement supervisor must successfully complete a lead abatement supervisor refresher training course from a department-accredited training provider no sooner than 180 days prior to the supervisor's certification expiration date and follow the procedures contained in §295.205 of this title.

(1) If a certification holder makes a timely and sufficient application for the renewal of the certification by their current certification's expiration date, the current certification in his/her possession does not expire until the application has been finally approved or denied by the department. The person whose certification has been expired for less than one year may renew their certification by complying with the requirements of §295.205(h) of this title. Certifications that have been expired for a period of one year or more beyond the three-year expiration date cannot be renewed. The person whose certification has been expired for a period of one year or more may become re-certified by complying with the current requirements and procedures, including any examination requirements, for an original certification, subject to the certification requirements of subsection (b) of this section.

(2) To maintain certification, the certified lead abatement supervisor must seek re-certification by submitting a complete certification renewal application to the department no later than 30 days before the certification expires. If the certified lead abatement supervisor does not submit an application for re-certification by that date, the application will not be deemed timely filed and the department cannot guarantee that the application will be reviewed and acted upon before the end of the lead abatement supervisor's certification period.

(f) Fees. The annual fee for lead abatement supervisor certification shall be \$150. The fee must accompany the initial or renewal certification application the first year, and accompany the annual fee payment coupon issued by the department for years two and three. In order to retain certification, all annual fees must be paid as required. Upon payment of each annual fee, a new identification (ID) card will be issued and shall be valid for the time period for which the annual fee was paid. Failure to make a timely annual fee payment may result in the suspension of the certification.

§295.209. LEAD ABATEMENT PROJECT DESIGNER: CERTIFICATION REQUIREMENTS.

(a) Certification requirements. A person must be certified by the department as a lead abatement project designer to engage in such activity in target housing and child-occupied facilities. Such certification shall be valid for a period of three years from the date the certification application is approved by the department, provided that the appropriate fee is paid each year.

(b) Specific requirements of applicants for certification as lead abatement project designers:

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(1) successfully complete a lead abatement supervisor training course, unless currently certified as a lead abatement supervisor in Texas, and receive a course completion certificate from a department-accredited training program provider;

(2) successfully complete a lead abatement project designer training course and receive a course completion certificate from a department-accredited training program provider; and

(3) meet or exceed the following additional education and/or experience requirements:

(A) a bachelor's degree in engineering, architecture, or a related profession, and one year of experience in building construction and design or a related field; or

(B) four years of experience in building construction and design or a related field.

(4) submit a complete application for lead abatement project designer certification to the department on a department-issued form and pay the appropriate certification fee within one year of successfully completing the original lead abatement supervisor and lead abatement project designer training courses.

(A) A person who fails to submit a complete lead abatement project designer certification application within one year of completing the required courses will be required to additionally complete lead abatement supervisor and lead abatement project designer refresher training courses from a department-accredited training program provider and receive course completion certificates. The individual must then submit a complete certification application, including course completion certificates of the additionally required lead abatement supervisor and lead abatement project designer refresher training courses, within one year of completing these refresher courses.

(B) If the applicant has not submitted a complete lead abatement project designer certification application within three years of completing the original lead abatement supervisor and lead abatement project designer training courses, including documentation of any additionally required refresher training courses as per subsection (b)(4)(A) of this section, the person will again be subject to the certification requirements of subsection (b) of this section in order to be granted certification.

(c) Responsibilities. The certified lead abatement project designer shall be responsible for the following:

(1) comply with standards of operation, including EPA and OSHA regulations;

(2) prepare a written abatement project design(s);

(3) develop a written occupant protection plan as described in §295.212(d)(5) of this title;

(4) prepare a written abatement report as described in §295.212(d)(11) of this title; and

(5) cooperate with department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.218 of this title (relating to Compliance: Inspections and Investigations).

(d) Application for certification renewal. To become re-certified, the certified lead abatement project designer must successfully complete lead abatement supervisor and lead abatement project designer refresher training courses from a department-accredited training provider no sooner than 180 days prior to the project designer's certification expiration date and follow the procedures contained in §295.205 of this title (relating to Certification: Applications, Denials, and Renewals).

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(1) If the certified lead abatement project designer currently possesses department-certification as a lead abatement supervisor, the 180-day limitation does not apply to taking the lead abatement supervisor refresher course. However, the 180-day limitation must still be met for renewing a lead abatement supervisor certification as required in §295.208(e) of this title (relating to Lead Abatement Supervisor: Certification Requirements).

(2) If a certification holder makes a timely and sufficient application for the renewal of the certification by their current certification's expiration date, the current certification in his/her possession does not expire until the application has been finally approved or denied by the department. The person whose certification has been expired for less than one year may renew their certification by complying with the requirements of §295.205(h) of this title. Certifications that have been expired for a period of one year or more beyond the three-year expiration date cannot be renewed. The person whose certification has been expired for a period of one year or more may become re-certified by complying with the current requirements and procedures, including any examination requirements, for an original certification, subject to the certification requirements of subsection (b) of this section.

(3) To maintain certification, the certified lead abatement project designer must seek re-certification by submitting a complete certification renewal application to the department no later than 30 days before the certification expires. If the certified lead abatement project designer does not submit an application for re-certification by that date, the application will not be deemed timely filed and the department cannot guarantee that the application will be reviewed and acted upon before the end of the lead abatement project designer's certification period.

(e) Fees. The annual fee for lead abatement project designer certification shall be \$300. The fee must accompany the initial or renewal certification application the first year, and accompany the annual fee payment coupon issued by the department for years two and three. In order to retain certification, all annual fees must be paid as required. Upon payment of each annual fee, a new identification (ID) card will be issued and shall be valid for the time period for which the annual fee was paid. Failure to make a timely annual fee payment may result in the suspension of the certification.

§295.210. LEAD ABATEMENT WORKER: CERTIFICATION REQUIREMENTS.

(a) Certification requirements. A person must be certified by the department as a lead abatement worker to engage in such activity in target housing and child-occupied facilities. Such certification shall be valid for a period of three years from the date the certification application is approved by the department, provided that the appropriate fee is paid each year.

(b) Specific requirements of applicants for certification as lead abatement workers:

(1) successfully complete a lead abatement worker training course and receive a course completion certificate from a department-accredited training program provider; and

(2) submit a complete application for lead abatement worker certification to the department on a department-issued form and pay the appropriate certification fee within one year of successfully completing the original lead abatement worker course.

(A) A person who fails to submit a complete lead abatement worker certification application within one year of completing the required course will be required to additionally complete a lead abatement worker refresher training course from a department-accredited training program provider and receive a course completion certificate. The individual must then submit a complete certification application, including a course completion certificate of the additionally required lead abatement worker refresher training course, within one year of completing the refresher course.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(B) If the applicant has not submitted a complete lead abatement worker certification application within three years of completing the original lead abatement worker training course, including documentation of any additionally required refresher training course, the person will again be subject to the certification requirements of subsection (b) of this section in order to be granted certification.

(c) Application for certification renewal. To become re-certified, the certified lead abatement worker must successfully complete a lead abatement worker refresher training course from a department-accredited training provider no sooner than 180 days prior to the worker's certification expiration date and follow the procedures contained in §295.205 of this title (relating to Certification: Applications, Denials, and Renewals).

(1) If a certification holder makes a timely and sufficient application for the renewal of the certification by their current certification's expiration date, the current certification in his/her possession does not expire until the application has been finally approved or denied by the department. The person whose certification has been expired for less than one year may renew their certification by complying with the requirements of §295.205(h) of this title. Certifications that have been expired for a period of one year or more beyond the three-year expiration date cannot be renewed. The person whose certification has been expired for a period of one year or more may become re-certified by complying with the current requirements and procedures, including any examination requirements, for an original certification, subject to the certification requirements of subsection (b) of this section.

(2) To maintain certification, the certified lead abatement worker must seek re-certification by submitting a complete certification renewal application to the department no later than 30 days before the certification expires. If the certified lead abatement worker does not submit an application for re-certification by that date, the application will not be deemed timely filed and the department cannot guarantee that the application will be reviewed and acted upon before the end of the lead abatement worker's certification period.

(d) Fees. The annual fee for lead abatement worker certification shall be \$50. The fee must accompany the initial or renewal certification application the first year, and accompany the annual fee payment coupon issued by the department for years two and three. In order to retain certification, all annual fees must be paid as required. Upon payment of each annual fee, a new identification (ID) card will be issued and shall be valid for the time period for which the annual fee was paid. Failure to make a timely annual fee payment may result in the suspension of the certification.

§295.211. LEAD FIRM: CERTIFICATION REQUIREMENTS.

(a) Certification requirements. All firms engaged in or offering to perform lead-based paint activities in target housing and child-occupied facilities must be certified by the department. Such certification is valid for three years from the date the certification application is approved by the department, provided that the appropriate fee is paid each year.

(b) Specific requirements of applicants for certification as lead firms:

(1) A firm seeking certification shall submit to the department a letter signed by the firm's owner or an authorized agent of the firm certifying that the firm will:

(A) only employ certified employees to conduct lead-based paint activities; and

(B) follow the standards for conducting lead-based paint activities set out in §295.212 of this title (relating to Standards for Conducting Lead-Based Paint Activities).

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(2) A firm shall submit a statement indicating whether the firm is a corporation, giving the state of incorporation and charter number; or, if not a corporation, provide a list of all owners (including their titles) employed by the unincorporated firm.

(3) If the firm operates under an assumed name, the owner or authorized agent of the firm shall provide to the department with their Lead Firm certification application a copy of the firm's Certificate of Assumed Name that lists the firm's Assumed Name of Business, the address of the firm, and the name of the person registering the firm as an assumed name.

(4) The firm shall maintain all records pursuant to the requirements in §295.212 of the title.

(5) A firm shall submit a complete application form for lead firm certification to the department on a department-issued form and pay the appropriate certification fee.

(c) Responsibilities. The certified firm shall be responsible for the following:

(1) comply with the standards of operation, including EPA and the Occupational Safety and Health Administration of the United States Department of Labor (OSHA) regulations;

(2) provide required notification to the department about impending abatement projects, changes requiring re-notification, and emergency notifications, as described in §295.214 of this title (relating to Notifications);

(3) supply and train employees who perform lead-based paint abatement activities in the use of personal protection equipment, and to supervise their compliance;

(4) assist department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.218 of this title (relating to Compliance: Inspections and Investigations); and

(5) ensure that each employee engaged in lead-based paint activities is properly certified, and has a department-issued identification (ID) card and one form of a government-issued photo ID present at the worksite.

(d) Application for certification renewal. To become re-certified, the certified lead firm must follow the procedures contained in §295.205 of this title (relating to Certification: Applications, Denials, and Renewals).

(1) If a certification holder makes a timely and sufficient application for the renewal of the certification by their current certification's expiration date, the current certification in the firm's possession does not expire until the application has been finally approved or denied by the department. The firm whose certification has been expired for less than one year may renew their certification by complying with the requirements of §295.205(h) of this title. Certifications that have been expired for a period of one year or more beyond the three-year expiration date cannot be renewed. The firm whose certification has been expired for a period of one year or more may become re-certified by complying with the current requirements and procedures for an original certification, subject to the certification requirements of subsection (b) of this section.

(2) To maintain certification, the certified firm must seek re-certification by submitting a complete certification renewal application to the department no later than 30 days before its certification expires. If the certified firm does not submit its application for re-certification by that date, the application will not be deemed timely filed and the department cannot guarantee that the application will be reviewed and acted upon before the end of the firm's certification period.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(e) Fees. The annual fee for lead firm certification shall be \$500. The fee must accompany the initial or renewal certification application the first year, and accompany the annual fee payment coupon issued by the department for years two and three. In order to retain certification, all annual fees must be paid as required. Failure to make a timely annual fee payment may result in the suspension of the certification.

§295.212. STANDARDS FOR CONDUCTING LEAD-BASED PAINT ACTIVITIES.

(a) Inspection.

(1) Lead-based paint inspections shall be conducted only by persons certified by the department as an inspector or risk assessor and must be conducted according to the procedures in this section.

(2) When conducting an inspection, the following locations shall be selected according to approved documented methodologies and tested for the presence of lead-based paint.

(A) For every residential dwelling and child-occupied facility, each interior component with a distinct painting history, and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.

(B) If conducting an inspection in a multi-family dwelling or child-occupied facility, all components with a distinct painting history in every common area shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.

(3) The collection and analysis of paint samples to determine the presence of lead-based paint shall be conducted using approved documented methodologies which incorporate adequate quality control procedures and analyzed according to subsection (e) of this section.

(4) The certified inspector or risk assessor shall prepare a written inspection report, which shall include the following information:

(A) date of inspection;

(B) address of buildings and units;

(C) date of construction of buildings and units;

(D) unit numbers (if applicable);

(E) name, address, and telephone number of the owner of buildings and units;

(F) name, signature, and certification number of each certified inspector and/or risk assessor conducting testing;

(G) name, address, and telephone number of the certified firm employing or contracting with each inspector and/or risk assessor;

(H) name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples;

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(I) each testing method and device and/or sampling procedure employed for paint analysis, including quality control data, copy of laboratory reports, and, if used, the brand name, model, and serial number of any XRF device, including downloaded XRF data;

(J) specific locations of each painted component tested for the presence of lead-based paint; and

(K) the results of the inspection expressed according to the sampling method used.

(5) All inspection reports shall be retained for a minimum of three years.

(b) Lead hazard screen.

(1) A lead hazard screen shall be conducted only by persons certified by the department as risk assessors.

(2) A lead hazard screen shall be conducted as follows.

(A) Collect background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children six years of age or younger.

(B) A visual inspection of the residential dwelling or child-occupied facility and common area shall be conducted to:

(i) determine if any deteriorated paint is present; and

(ii) locate at least two dust sampling locations;

(C) If deteriorated paint is present, each surface with deteriorated paint and having a distinct painting history shall be tested, using approved documented methodologies, for the presence of lead-based paint.

(D) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways, or stairwells where one or more children, age six or younger, are most likely to come in contact with dust.

(E) In multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in subparagraph (D) of this paragraph, the risk assessor shall also collect composite dust samples from any common areas where one or more children six years of age or younger are likely to come into contact with dust.

(3) Any paint and dust samples shall be taken using approved documented methodologies that incorporate adequate quality control procedures.

(4) Any collected paint chip or dust samples shall be analyzed according to subsection (e) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(5) The risk assessor shall prepare a written lead hazard screen report, which shall include the following:

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(A) the information required in a risk assessment report as specified in subsection (c) of this section, excluding paragraphs (11)(P)-(R); and

(B) recommendations concerning the desirability for follow-up risk assessments.

(6) All lead hazard screen reports shall be retained for a minimum of three years.

(c) Risk assessment.

(1) A lead risk assessment shall be conducted only by persons certified by the department as risk assessors and must be conducted according to the procedures in this subsection.

(2) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential sources of lead-based paint hazards. If deteriorated paint or other potential sources of lead-based paint hazards are present, each surface with deteriorated paint or each painted surface which is a potential lead-based paint hazard shall be tested using approved documented methodologies for the presence of lead.

(3) Background information shall be collected regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may result in lead-based paint exposure to one or more children six years of age or younger.

(4) The following surfaces which are determined, using approved documented methodologies to have a distinct painting history, shall be tested for the presence of lead:

(A) each friction surface or impact surface with visibly deteriorated paint; and

(B) all other surfaces with visibly deteriorated paint.

(5) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children six years of age or younger are most likely to come into contact with dust.

(6) For multi-family dwellings and child-occupied facilities, the samples required in paragraph (4) of this subsection shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(A) common areas adjacent to the sampled residential dwelling or child-occupied facility; and

(B) other common areas in the building where the risk assessor determines that one or more children six years of age or younger are likely to come into contact with dust.

(7) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in each room, hallway or stairwell utilized by one or more children, age six and under, and in other common areas in the child-occupied facility where one or more children, age six and under, are likely to come into contact with dust.

(8) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

- (A) exterior play areas where bare soil is present;
- (B) the rest of the yard (i.e., non-play areas) where bare soil is present; and
- (C) dripline/foundation areas where bare soil is present.

(9) Any paint, dust, or soil sampling or testing shall be conducted using approved documented methodologies that incorporate adequate quality control procedures.

(10) Any collected paint chip, dust, or soil samples shall be analyzed according to subsection (e) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(11) A written risk assessment report shall be completed by a certified risk assessor and the report shall include the following information:

- (A) date of assessment;
- (B) physical address of building;
- (C) date of construction of building;
- (D) unit numbers (if applicable);
- (E) name, address, and telephone number of the owner of each building or unit;
- (F) name, signature, and certification number of the certified risk assessor conducting the assessment;
- (G) name, address, and telephone number of the certified firm employing each risk assessor;
- (H) name, address, and telephone number of each recognized laboratory conducting analysis of collected samples;
- (I) results of the visual inspection;
- (J) testing method and sampling procedure for paint analysis employed;
- (K) specific locations of each painted component tested for the presence of lead-based paint;
- (L) all data collected from on-site testing including quality control data and, if used, the brand name, model, and serial number of any XRF device (including downloaded XRF data);
- (M) copies of all laboratory analysis on collected paint, soil, and dust samples;
- (N) any other sampling results;
- (O) any background information collected pursuant to paragraph (3) of this subsection;

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(P) to the extent that they are used as part of the lead-based paint hazard determination, an evaluation of the adequacy of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-related hazards;

(Q) a description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards; and

(R) a description of recommended interim controls and/or abatement options for each identified lead-based paint hazard, and a suggested prioritization for taking each action based on the immediacy and severity of the hazard. If the use of an encapsulant or enclosure is recommended, the report shall include a maintenance and monitoring schedule for the encapsulant or enclosure.

(12) All risk assessment reports shall be retained for a minimum of three years.

(d) Abatement.

(1) A lead abatement shall be conducted only by an individual certified by the department as a worker or supervisor, and if conducted, shall be conducted according to the procedures in this subsection.

(2) A certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be available either directly or through a pager or answering service, and able to be present at the work site in no more than two hours.

(3) The certified supervisor and the certified firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this subsection and all other federal, state, and local requirements.

(4) Notification of the commencement of lead-based paint abatement activities in target housing or child-occupied facilities or as a result of a federal, state, or local order shall be given to the department, according to the procedures established in §295.214 of this title (relating to Notifications), prior to the commencement of abatement activities.

(5) A written occupant protection plan shall be developed and implemented for all abatement projects and shall be prepared according to the following procedures.

(A) The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the public from exposure to any lead-based paint hazards.

(B) A certified supervisor or project designer shall prepare and sign the occupant protection plan.

(C) The occupant protection plan must be kept at the worksite by the certified lead abatement firm at all times during any abatement activity.

(6) Unless presumed lead, a copy of the lead inspection or lead risk assessment report prepared for the lead abatement project shall be kept at the worksite by the certified lead abatement firm and be available for department inspection.

(7) The following work practices shall be followed during a lead abatement.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(A) Open-flame burning or torching of lead-based paint is prohibited.

(B) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control capable of removing particles of 0.3 microns or larger from the air at 99.97% or greater efficiency.

(C) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than two square feet in any one room, hallway, or stairwell or totaling no more than 20 square feet on exterior surfaces.

(D) Operating a heat gun on lead-based paint is permitted only at a temperature below 1,100 degrees Fahrenheit.

(8) If conducted, soil abatement shall be conducted in one of the following ways.

(A) If soil is removed:

(i) the soil shall be replaced by soil with a lead concentration as close to local background as practicable, but less than 400 ppm; and

(ii) the soil that is removed shall not be used as top soil at another residential property or child-occupied facility.

(B) If soil is not removed, the soil shall be permanently covered, as defined in §295.202 of this title.

(9) The following post-abatement clearance procedures shall be performed by a certified inspector or risk assessor.

(A) Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris, or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris, or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(B) Following the visual inspection and any post-abatement cleanup required by paragraph (8)(A) of this subsection, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques.

(C) Dust samples for clearance purposes shall be taken using approved documented methodologies that incorporate adequate quality control procedures.

(D) Dust samples for clearance purposes shall be taken a minimum of one hour after completion of final post-abatement cleanup activities.

(E) The following post-abatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the residential dwelling or child-occupied facility.

(i) After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of each of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(ii) After conducting an abatement with no containment, two dust samples shall be taken from each of no less than four rooms, hallways or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and window trough (if present) and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are less than four rooms, hallways or stairwells within the residential dwelling or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

(iii) Following an exterior paint abatement, a visual inspection shall be conducted to determine and ensure that all horizontal surfaces in the outdoor living area closest to the abated surface shall be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips in bare soil in common areas, on the dripline or next to the foundation below any abated exterior surface. If paint chips are present, they must be removed from the site and properly disposed, according to all applicable federal, state, and local requirements.

(F) The rooms, hallways or stairwells selected for sampling shall be selected according to approved documented methodologies.

(G) The certified inspector or risk assessor shall compare the residual lead dust level (as determined by the laboratory analysis) from each single surface dust sample with clearance levels in paragraph (12) of this subsection for lead in dust on floors, interior window sills, and window troughs or from each composite dust sample with the applicable clearance levels for lead in dust on floors, interior window sills, and window troughs divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance level or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance level divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be recleaned and retested.

(10) In a multi-family dwelling with similarly constructed and maintained units, random sampling for the purposes of clearance may be conducted, provided:

(A) the individuals who abate or clean the units do not know which units will be selected in the sample;

(B) a sufficient number of units are selected for sampling to provide a 95% level of confidence that no more than 5.0% or 50 of the units (whichever is smaller) in the sampled population exceed the appropriate clearance levels; and

(C) the selected units are sampled and evaluated for clearance according to the procedures found in paragraph (8) of this subsection.

(11) All lead-based paint waste materials from the abatement project must be disposed of in accordance with applicable federal, state, and local requirements.

(12) A written abatement report shall be prepared by a certified supervisor or project designer as required in this section. This report shall be completed within sixty days of the stop-date on each abatement notification. The abatement report shall include the following information:

(A) start and completion dates of abatement;

(B) the name and address of each certified firm conducting the abatement and the name of each supervisor assigned to the abatement project;

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(C) the occupant protection plan prepared pursuant to paragraph (5) of this subsection;

(D) the name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing;

(E) a copy of all laboratory reports of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses;

(F) a detailed written description of the abatement, including abatement methods used, locations of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures;

(G) the name, address, and telephone number of the waste disposal site; and

(H) the name, signature, and the department certification number of the person completing the post-abatement report and the completion date of the report.

(13) Clearance levels that are appropriate for the purposes of this section are:

(A) dust wipes from floors/carpets: $<40\mu\text{g}/\text{ft}^2$;

(B) dust wipes on window sills: $<250\mu\text{g}/\text{ft}^2$; and

(C) dust wipes on window troughs (wells): $<400\mu\text{g}/\text{ft}^2$.

(e) Collection and laboratory analysis of samples. Any paint chip, dust, or soil samples collected pursuant to the standards contained in this section shall be:

(1) collected by persons certified by the department as a lead inspector or risk assessor; and

(2) ensured by the lead inspector or risk assessor to be analyzed by a laboratory recognized by the Environmental Protection Agency pursuant to §405(b) of the Toxic Substances Control Act (TSCA) as being capable of performing analyses for lead in paint chip, dust, and soil samples.

(f) Composite dust sampling. Composite dust sampling may only be conducted in the situations specified in subsections (b) - (d) of this section. If such sampling is conducted, the following conditions shall apply:

(1) composite dust samples shall consist of at least two subsamples;

(2) every component that is being tested shall be included in the sampling; and

(3) composite dust samples shall not consist of subsamples from more than one type of component.

(g) Determinations of presence of lead-based paint and lead hazards.

(1) Lead-based paint is present:

(A) on any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5% by weight; and

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(B) on any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.

(2) A paint –lead hazard is present:

(A) on any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in Sec. 295.212(g)(3)(A) below;

(B) on any chewable lead-based paint surface on which there is evidence of teeth marks;

(C) where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame; and

(D) if there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(3) A dust-lead hazard is present in a residential dwelling or child-occupied facility:

(A) in a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than $40 \mu\text{g}/\text{ft}^2$ for floors and $250 \mu\text{g}/\text{ft}^2$ for interior window sills, respectively;

(B) on floors or interior window sills in an unsampled residential dwelling in a multi family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

(C) on floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled common area in the same common area group on the property.

(4) A soil-lead hazard is present:

(A) in a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million (ppm); or

(B) in the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than 1,200 ppm.

(h) Recordkeeping. All reports or plans required in this section shall be maintained by the certified firm or individual contractor, who prepared the report, for no less than three years. The certified firm or individual contractor also shall provide copies of these reports to the building owner who contracted for its services and these reports shall be made available to the department upon request. Building owners are subject to the requirements mandated under §1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and 40 Code of Federal Regulations, §745, Subpart F, "Disclosure of Known Lead-based Paint and/or Lead-based Paint Hazards Upon Sale or Lease of Residential Property."

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

§295.213. LEAD-BASED PAINT ACTIVITIES REQUIREMENTS.

(a) Lead-based paint activities, as defined in §295.202 of this title (relating to Definitions) shall only be conducted according to the procedures and standards contained in §295.212 of this title (relating to Standards for Conducting Lead-Based Paint Activities). However, the standards contained in §295.212 of this title do not apply when treating paint-lead hazards less than:

- (1) two square feet of deteriorated lead-based paint per room or equivalent,
- (2) twenty square feet of deteriorated paint on the exterior building, or
- (3) ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

(b) No persons may offer to perform or perform any lead-based paint activity in target housing or in a child-occupied facility, unless certified to perform that activity according to the procedures in §§295.205 - 295.211 of this title (relating to Texas Environmental Lead Reduction).

(c) All firms performing lead-based paint activities shall employ only appropriately certified individuals to conduct those lead-based paint activities.

(d) All persons engaged in lead-based paint activities must have the department-issued certification ID card and one form of photo identification present at the worksite.

§295.214. NOTIFICATIONS.

(a) Notification requirement. The Texas Department of Health's (department) Environmental Lead Notification Section (ELNS) and the appropriate department regional office shall be notified by the certified lead firm in writing on a form specified by the department of any lead-based paint abatement activity in target housing (each individual and separate residential dwelling or each building within a multifamily dwelling complex) or child-occupied facilities. The department notification form must be filled out completely and properly including an accurate description of the work to be performed. Blanks which do not apply shall be marked "N/A." The designation of "N/A" will not be accepted for references requiring identification of the work site, building description, building owner, certified lead abatement firm, and individuals required to be identified on the notification form. Any changes to the original notification will require that an amended notification be submitted.

(b) Responsibility. It is the responsibility of the certified lead firm to notify the ELNS and regional office of any initial notifications, amendments, cancellations, or emergency notifications. Each notification made to the ELNS shall contain the original signature of the certified firm's owner or an authorized agent of the firm.

(c) Timeliness of notification.

(1) ELNS notification. Written notifications of lead abatement activity must be hand-delivered, express-mailed, or postmarked at least seven working days (not calendar days) before the start of lead-based paint abatement. Notifications must be delivered by United States Postal Service, commercial delivery service, or by hand-delivery. Telephone facsimile (FAX) of notifications to the ELNS is not permitted. The start-date is considered to be the date when lead-based paint abatement begins.

(2) Regional office notification. In addition to the notification requirement in paragraph (1) of this subsection, a copy of the notification must be received by the regional office on the same date

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

that the notification is mailed to the ELNS, which shall be at least seven working days prior to the start of the lead-based paint abatement. The copy of the notification may be hand-delivered, express-mailed, sent by electronic mail (E-mail), or faxed to the regional office.

(d) Start/Stop-date amendments. For any changes to the start and/or stop-date(s), the ELNS and the appropriate regional office shall be notified by telephone during the hours of 8:00 a.m. to 5:00 p.m. Central Standard Time (CST) prior to the original or amended start and/or stop-date(s) as previously specified on the notification form. If the amended stop-date is earlier than the original scheduled or previously amended stop-date, then it must be reported prior to the new or amended stop-date. A written amended notification must be postmarked to the ELNS and delivered to the regional office within 24 hours following the telephone communication with the ELNS and the regional office.

(e) Cancellations. When a lead abatement project is to be cancelled, the ELNS and the regional office shall be notified by telephone during the hours of 8:00 a.m. to 5:00 p.m. CST at least 24 hours prior to the scheduled start date, and a notification of cancellation must be submitted to the ELNS and postmarked no later than 24 hours following the telephone communication with the ELNS and regional office. The copy of the notification shall also be hand-delivered, express-mailed, sent by E-mail, or faxed to the regional office no later than 24 hours following the telephone communication with the ELNS and regional office.

(f) Emergency notification. In the event of lead abatement made necessary by an unexpected or unplanned lead incident, notification will be made as soon as practicable, but not later than the following work day after the occurrence of the incident. Initial notification shall be made by telephone to the ELNS and regional office followed by formal notification on the department's notification form. Emergencies shall be documented to the extent that the need for the emergency is evident. An emergency lead abatement operation means a lead abatement operation that was not planned, but results from a sudden, unexpected event. This event, if not immediately attended to, presents a public health or safety hazard. Emergencies do not include immediate abatement work resulting solely from a lack of adequate planning for foreseeable lead abatement activity.

(g) Lead abatement notification fees.

(1) Applicability. The certified firm's owner or an authorized agent of the firm shall remit to the department a fee that is based on each child-occupied facility, individual and separate residential dwelling, or each building within a multi-family dwelling complex to be abated.

(2) Payment. An invoice for the required fee will be sent to the person submitting the notice after the notification has been received by the department. Fee amounts, address, and fund numbers are included on the form. Payment must be received no later than 60 days following the invoice date.

(3) Fees. The fee for each original notification is \$100.

(4) Nonpayment of fees. Failure to pay the required fee after an invoice has been sent shall be considered a violation and may subject the certified firm or authorized agent of the firm to administrative penalties as listed in §295.220 of this title (relating to Compliance: Administrative Penalty). The certified firm or authorized agent of the firm may also be subject to civil or criminal penalties if applicable. Governmental organizations may submit a copy of the interagency transfer document or a statement that a check has been requested and is in processing.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

§295.215. RECIPROCITY.

(a) Terms of reciprocity. A person who is certified or licensed in good standing to perform lead-based paint activities in target housing and child-occupied facilities in another state may obtain reciprocal certification in the same discipline provided they are certified according to the terms of these sections prior to commencing such activities.

(1) An applicant seeking reciprocal certification shall submit a complete reciprocal application on a department-issued form with the appropriate fee.

(2) An applicant seeking reciprocal certification shall sign a statement that the applicant has read and understands the Texas Environmental Lead Reduction Rules (§§295.201-295.220 of this title) and agrees to follow the standards for conducting lead-based paint activities set out in §§295.212 and 295.213 of this title (relating to Standards for Conducting Lead-Based Paint Activities).

(b) Applicant status. All persons residing in other states, applying for any category of certification, must comply with all certification requirements which would be imposed on a Texas resident.

(c) Acceptance of qualifying documents. Out-of-state certifications or licenses can be accepted for the purpose of qualifying for Texas certification provided that they are valid and are verifiable by the department. The certification or license from another state must be from a state which has received United States Environmental Protection Agency (EPA) authorization to administer and enforce a state certification and training program under Title IV of the Toxic Substances Control Act (TSCA) or be from a state whose certification and training program is operated by EPA. The burden of proof in such matters is the responsibility of the applicant; the department must reject unverifiable documentation.

§295.216. ACCREDITATION AND CERTIFICATION FEE EXEMPTION.

(a) Accreditation. Accreditation fees for training programs shall not be imposed on any federal, state, or local government, or nonprofit entities.

(b) Certification. Government employees who currently possess a fee-exempt certification which was issued prior to September 1, 2003, for the sole purpose of executing governmental duties shall continue to remain exempt from certification annual fees until their certification expires, provided that the certified individual remains employed by the government and the governmental nature of the duties performed remain unchanged. Upon expiration of this fee-exempt certification, in order to renew this certification, the appropriate fee shall be paid upon submission of a complete certification application for renewal.

§295.217. [RESERVED]

§295.218. COMPLIANCE: INSPECTIONS AND INVESTIGATIONS.

(a) The Texas Department of Health (department) shall maintain the right to inspect or investigate the practices of any person involved in lead-based paint activities in target housing or child-occupied facilities as defined in this subchapter of this title (relating to Texas Environmental Lead Reduction).

(b) A department representative, upon presenting appropriate credentials, shall have the right to enter at all reasonable times any area or environment, including but not limited to any containment work

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

area, building, construction site, storage, vehicle, training facility, or office area to inspect and investigate for compliance with these sections of this title (relating to Texas Environmental Lead Reduction), to review records, to question any person, or to locate, identify, sample, and assess the condition of lead-based paint-containing material.

(c) Advance notice of inspections or investigations by the department is not required.

(d) Authority and responsibility for the qualifications, health status, and personal protection of department representatives reside with the department. A department representative shall not be impeded or refused entry in the course of his official duties in accordance with these regulations by reason of any regulatory or contractual specification. A person who refuses to allow a compliance inspection shall be in violation in these sections of this title (relating to Texas Environmental Lead Reduction).

§295.219. COMPLIANCE: REPRIMAND, SUSPENSION, DECERTIFICATION, [AND] DEACCREDITATION, AND PROBATION.

(a) After notice to the certified or accredited person of an opportunity for a hearing in accordance with subsection (c) of this section, the Texas Department of Health (department) may reprimand the person or modify, suspend, suspend on an emergency basis, or decertify a certification or deaccredit an accreditation.

(b) The department may reprimand any certified or accredited person, or may suspend or decertify a certification or deaccredit an accreditation for:

(1) failure to comply with any provision of the Act, any rule adopted by the Texas Board of Health, or any order issued by the department or a court;

(2) failure to comply with applicable federal or state standards for lead-based paint activities;

(3) failure to maintain records as required by these sections;

(4) failure to meet the qualifications for which one holds a certification or accreditation;

(5) fraudulently, by misrepresentation, or deceptively obtaining or attempting to obtain a certification or contract for a lead-based paint activity;

(6) falsifying records that are required to be maintained by this section; or

(7) failure to pay required annual certification or accreditation fees.

(c) The contested-case hearing provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001, shall not apply to any enforcement action proposed to be taken under this section. The department's Fair Hearing Procedures found at 25 TAC, §§1.51-1.55, shall apply.

(d) If a certification or accreditation issued under these sections has been suspended, the person(s) named in the suspension are not eligible to reapply for certification or accreditation under these sections of this title (relating to Texas Environmental Lead Reduction) for one year.

(e) If a certification issued under these sections of this title (relating to Texas Environmental Lead Reduction) has been decertified, the person(s) named in the decertification are not eligible to reapply for certification under these sections for three years.

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(f) The board may place on probation a person whose certification or accreditation is suspended.

(g) The board may require a person whose certification or accreditation suspension is probated to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

§295.220. COMPLIANCE: ADMINISTRATIVE PENALTY.

(a) If a person violates the Act, or a rule adopted or order issued under the Act, the Texas Department of Health (department) may assess an administrative penalty.

(b) The penalty shall not exceed \$5,000 a day per violation. Each day a violation continues will be considered a separate violation. The total penalty will be the sum of all individual violation penalties.

(c) In assessing administrative penalties, the department shall consider the:

(1) history of previous violation(s);

(2) seriousness of the violation(s);

(3) hazard to the health and safety of the public; and

(4) demonstrated good faith, and any other matter which justice may require.

(d) Individual violations may be reduced or enhanced based on the considerations listed in subsection (c) of this section, or other matters that justice may require. A reduction or enhancement may be considered, based on the facts presented to the department.

(e) A person is subject to double the initial penalty on second finding of violation of any provision of the Act or rules. Third and subsequent violations of a provision are subject to five times the initial penalty. In any case, the penalty shall not exceed \$5,000 a day per violation.

(f) Violations shall be placed in one of the following severity levels.

(1) Severity Level I. The base penalty for a Level I violation, first occurrence will not exceed \$5,000 per day, per violation. Examples of Level I violations include, but are not limited to:

(A) working without certification from the department or working with improper (forged, altered, etc.) certification;

(B) working with a suspended or decertified certification;

(C) failing to develop and implement a written occupant protection plan;

(D) providing training certificates to persons who have not attended the required training course as specified by the department;

TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

(E) using prohibited lead abatement methods such as open-flame burning or torching, machine sanding or grinding without a high-efficiency particulate air (HEPA) vacuum tool, uncontained hydroblasting or high pressure washing, abrasive blasting or sand blasting without HEPA vacuum exhaust tools, or heat guns that operate at 1100 degrees Fahrenheit or above; or

(F) training for certification purposes without obtaining accreditation from the department.

(2) Severity Level II. The base penalty for Level II violations on a first occurrence will not exceed \$2,000 per day, per violation. Examples of Level II violations include, but are not limited to:

(A) failing to submit a notification to the department;

(B) failing to conduct a training course for the specified time period;

(C) certified supervisor not onsite or available directly through a pager or answering service;

(D) refusing or impeding entry to department representatives in order to conduct compliance inspections;

(E) working with an expired certification; or

(F) training with an expired training provider accreditation.

(3) Severity Level III. The base penalty for Level III violations on first occurrence will not exceed \$1,000 per day, per violation. Examples of Level III violations include, but are not limited to:

(A) failing to pay the required notification fee to the department;

(B) submitting an improper notification to the department;

(C) failing to have the department-issued certification ID card and one form of photo identification present at the worksite ;

(D) training provider fails to submit information to the department regarding training course schedules, or to notify the department of cancellations within the specified time periods;

(E) inspection/risk assessment report not prepared; or

(F) failure to have a written occupant protection plan at the worksite.

(g) The person charged with the violation will be given the opportunity for a hearing conducted in accordance with the department's fair hearing procedures in Chapter 1 of this title (relating to the Board of Health).

(h) The hearing regarding a proposed administrative penalty may be consolidated with another hearing on an administrative penalty.

(i) If the person charged with the violation fails to request a hearing within 30 days following receipt of a notice of violation, an administrative penalty may be assessed after the Commissioner of Health has determined that a violation did occur and the amount of the penalty is warranted.